

SCOTTISH LEGISLATION IN THE SEVENTIES

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The following is a survey of Acts of Parliament relating to Scotland passed during the period 1970-1979. Most of the Acts are "Scotland only" but a few that apply to the whole of Great Britain or the United Kingdom have been included, where Scottish provisions have been drafted separately from those applicable elsewhere, and which could well have been set out as "Scotland only" Acts.

The summaries bear no relation to the length of the material summarised. Consolidation Acts need only be mentioned, while some legislation such as that related to housing is so complicated that summaries are virtually impossible. Shorter Acts can on the other hand be explained fairly fully. It is hoped that the summaries are not misleading.

It would be an interesting exercise to compare the scope of the legislation listed here with the scope of the legislation that was included in the list of devolved matters under Schedule 10 of the Scotland Act 1978.

It is intended to update this list each year, and to produce next year an index to the legislation passed in the period 1970 to 1980. The index, like this survey, will of course be essentially a summary. For more detailed information, recourse may be had to the Index to the Statutes in Force and to the Chronological Table of the Statutes, both of which are published by the Stationery Office.

In cross-references, where an Act is not expressly named, it may be assumed that the reference is to an Act of the same name as the Act being discussed, or to an Act of a similar name.

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4 Valuation for Rating (Scotland) Act

Buildings used for intensive methods of livestock production (factory farming) had been held by the courts not to be entitled to the privileges granted with respect to rates either to agricultural land or to industry and freight transport. This Act enables the Secretary of State by order, in effect, to extend industrial derating to such enterprises. The order is to be made by statutory instrument, subject to approval by resolution of the House of Commons.

5 Housing (Amendment) (Scotland) Act

This Act makes a minor amendment to the provisions for financing the Scottish Special Housing Association. (Repealed, 1976 c.11)

6 Rural Water supplies and Sewerage (Scotland) Act

This Act permits the Secretary of State to contribute up to £60 million (in aggregate) to local authorities under the Rural Water Supplies and Sewerage Act 1944 (7 & 8 Geo. 6, c.26). The limit was formerly £45 million.

20 Roads (Scotland) Act

This is a major Act. It deals with the procedures to be followed in making schemes for special roads (i.e. mainly of motorway standard) and trunk roads, the powers of local authorities in relation to road improvements, and with powers to acquire land by agreement or compulsorily for the construction or improvement of highways. A miscellany of provisions controls interference with roads caused by objects falling on them and causing obstruction, dangerous vegetation, fences and walls, treeplanting within 5 metres of a carriageway, the use of builders' skips, and other obstructions.

28 Local Government (Footpaths and Open Spaces) (Scotland) Act

This is a useful little Act, which enables local authorities to take over the control and maintenance of footpaths constructed to ensure the separation of vehicular traffic from pedestrian traffic, from the owner of land who has constructed them in relation to any development. Authorities are also given power to construct and maintain such paths themselves in association with any development. They may also take over the management of open space for amenity purposes, but acquisition is permitted only by agreement, not under compulsion, where the powers are exercised under this Act.

35 Conveyancing and Feudal Reform (Scotland) Act

This is a major piece of legislation, implementing in part the recommendations of the Halliday Committee (Cmnd 3118) and government proposals contained in "Land Tenure in Scotland - A Plan for Reform" (Cmnd 4099). The Act greatly enhances the rights of a proprietor to obtain an order to vary or discharge inconvenient feudal obligations. Application is made to the Lands Tribunal for Scotland, conceived in the Lands Tribunal Act 1949 (12, 13 & 14 Geo. 6, c.42), but brought forth into the world only on 1st March 1971. The standard security now replaces the older forms of heritable security or "mortgage". The Act gave the debtor an indefeasible right to redeem the loan on giving two months' notice of his intention to do so to the creditor. This led to difficulties with commercial loans for fixed terms, and was remedied by the provisions of the Redemption of Standard Securities (Scotland) Act 1971 (c.45).

38 Building (Scotland) Act

This Act contains textual amendments to the Building (Scotland) Act 1959 (7 & 8 Eliz. 2, c.24).

2 Teaching Council (Scotland) Act

This is an enabling Act, empowering the Secretary of State to provide by regulation for the deduction of the fee for renewal of registration with the General Teaching Council for Scotland from teachers' salaries by their employers.

8 Hospital Endowments (Scotland) Act

This Act provides for the transfer of endowments from the various Boards of Management to a newly constituted Scottish Hospital Trust, and widens the range of investments open to the Scottish Hospital Endowments Research Trust. (Repealed and substantially re-enacted, National Health Service (Scotland) Act 1978 (c.29))

28 Rent (Scotland) Act

This Act consolidates the Scottish Rent Acts and related legislation from 1920 onwards. It has been subsequently much amended.

31 Interest on Damages (Scotland) Act

This Act contains textual amendments to the Interest on Damages (Scotland) Act 1958 (6 & 7 Eliz. 2, c.61), to enable a court to back-date the award of interest on damages (whether based on breach of contract, delict or any other ground) to the date when the right of action arose.

42 Education (Scotland) Act

The power to charge fees in a limited number of public schools, which had been abolished under the Education (Scotland) Act 1969 (c.49), was restored to education authorities. Fees could be remitted in whole or in part on grounds of ability or aptitude. The principal provisions of this Act and that of 1969 are in the form of textual amendments to the consolidation Act of 1962.

45 Redemption of Standard Securities (Scotland) Act

The defect in the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35), mentioned above, was remedied by this Act.

55 Law Reform (Jurisdiction in Delict) (Scotland) Act

Where the delict or quasi-delict forming the cause of action is committed in Scotland, this Act confers jurisdiction on the Court of Session or the Sheriff court, as appropriate, in any proceedings subsequently arising. Personal citation of the defender in Scotland is no longer necessary. This legislation, passed on the recommendation of the legal profession and the Scottish Law Commission, brings Scots Law into line with that of countries such as France, the German Federal Republic, Italy and England. The rules relating to enforcement are not affected, and enforcement of any decree granted may still present problems.

58 Sheriff Courts (Scotland) Act

This Act replaces legislation dating back to 1822 with new provisions for the organisation, administration and jurisdiction of

Sheriff Courts. It implements some of the recommendations of the Report of the Grant Committee on the Sheriff Court (Cmnd 3248). The term "sheriff principal" to describe the office of sheriff depute is given statutory recognition, and sheriffs-substitute become sheriffs, simpliciter.

Sheriffs-principal are all prohibited from engaging in private practice (whereas previously only those of the Lothians and Peebles and of Lanarkshire were full-time). The organisational and administrative functions of the Secretary of State are in practice carried out by the Scottish Courts Administration, headed by a sheriff principal.

Part III of the Act provides for the raising of the upper limit of the privative civil jurisdiction of the sheriff court by Order in Council, and the replacement of the old Small Debt Court and summary cause procedures with a new summary cause procedure which came into effect in 1976. Procedure in civil cases is regulated by the Court of Session, by act of sederunt.

1972

24 Social Work (Scotland) Act

This brief Act corrects a technical defect in section 30 of the Social Work (Scotland) Act 1968 (c.49), to permit a children's hearing to continue to deal with a case where a child's 16th birthday occurs after the commencement of proceedings.

29 Harbours, Piers and Ferries (Scotland) Act

This is a brief Act which makes textual amendments to the Act of 1937 (1 Edw. 8 & 1 Geo. 6, c.28). The financial limit on minor works which local or harbour authorities propose to undertake is increased to £200,000, and may be subsequently varied by order of the Secretary of State made by statutory instrument.

46 Housing (Financial Provisions) (Scotland) Act

This is the twin of the English Housing Finance Act passed on the same day, and is based on proposals contained in the White Paper entitled "The Reform of Housing Finance in Scotland" (Cmnd 4727).

It provides for the phasing out of former subsidies in the public sector, and their replacement by subsidies from the central government, payable to local authorities, New Town Development Corporations and the Scottish Special Housing Association, in respect of rebates made to tenants by these bodies and to local authorities in respect of allowances paid by them to private tenants of unfurnished accommodation.

Few provisions have escaped amendment or repeal (e.g. see 1975 c.28).

51 Chronically Sick and Disabled Persons (Scotland) Act

The provisions of sections 1 and 2(1) of the UK Act of 1970 (c.44),

requiring local authorities to inform themselves as to the need for, and to publish general information about, welfare services, and to provide a lengthy list of services and facilities for chronically sick and disabled persons, are extended to Scotland.

52 Town and Country Planning (Scotland) Act

This Act consolidates (with amendments to give effect to recommendations of the Scottish Law Commission) Scottish planning legislation from 1945 onwards. Many mainly technical amendments have been occasioned by the passing of the Local Government (Scotland) Act 1973 (c.65) and the Community Land Act 1975 (c.77).

58 National Health Service (Scotland) Act

This is essentially an enabling Act, which was passed following the publication of a green paper by the Scottish Home and Health Department in December 1968, entitled "Administrative Reorganisation of the Scottish Health Services", and of a white paper in July 1971 entitled "Reorganisation of the Scottish Health Services" (Cmnd 4734).

The Act provides for the replacement of the former tripartite administrative structure by area health boards, with local health councils to represent public opinion and local consultative committees to represent professional interests relating to the provision of services.

Other features are the creation of the Scottish Health Service Planning Council and the Common Services Agency, and provision for the appointment of a Health Service Commissioner for Scotland.

This Act, except principally for provisions dealing with transfer of property, rights, liabilities and staff, has been repealed and re-enacted by the Act of 1978 (c.29).

59 Administration of Justice (Scotland) Act

This Act makes four minor changes in the law of civil procedure. Perhaps the most interesting is the introduction of a general power for an arbiter to state a case for the opinion of the Court of Session on a question of law, on the application of a party to the arbitration, or as directed by that Court. On questions of fact, his award remains final.

64 Harbours Development (Scotland) Act

Although drafted in general terms, this Act in fact applies only to the harbours at Uig in Skye, Invergordon and Peterhead Harbour of Refuge. The purpose is to enable the Secretary of State, as harbour authority, to secure development of the last of these to meet the needs of the expanding North Sea oil industry.

67 Companies (Floating Charges and Receivers) (Scotland) Act

The recommendations contained in the Scottish Law Commission's Report on the Companies (Floating Charges) (Scotland) Act 1961

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1972 (cont'd)

(Cmnd 4336) are substantially implemented in this Act. The Act of 1961 (9 & 10 Eliz. 2, c.46) is re-enacted with modifications, and provisions are made for the appointment and functioning of receivers.

1973

22 Law Reform (Diligence) (Scotland) Act

In anticipation of a general review of the law of diligence, this Act exempts essential items of domestic furniture from warrant sales.

25 Succession (Scotland) Act

This Act increases the value of the prior rights of a surviving spouse on intestacy under the Act of 1964 (c.41), and provides for increases to be made in future by order of the Secretary of State made by statutory instrument. Drafts of any such statutory instrument must be laid before Parliament but are not subject to Parliamentary control.

52 Prescription and Limitation (Scotland) Act

The Scottish Law Commission made recommendations in its Report on Reform of the Law relating to Prescription and Limitations of Action in 1970 (Scots Law Com No. 15) which are enacted in this Act, with minor modifications. It repeals and replaces legislation covering a period of over 500 years. (Tradesmen's receipts, which formerly should have been kept for three years, should now be kept for five years.)

56 Land Compensation (Scotland) Act

This Act re-enacts the provisions of the GB Act of 1973 (c.26) in the form in which they apply to Scotland, and provides for the reprinting of the latter (with omissions and amendments) in the form in which they apply to England and Wales. It is based on proposals in the white paper of October 1972 entitled "Development and compensation - Putting People First" (Cmnd 5124).

It provides for compensation for depreciation caused by public works, sound-proofing of buildings affected by public works and aerodromes, home and farm loss payments, and generally tips the balance in favour of the house-holder, and of the small businessman who loses his livelihood.

59 Education (Scotland) Act

In the case of Malloch v. Aberdeen Corporation, 1973 SC 227, 1974 SLT 253, the Court of Session held that a regulation, made by the Secretary of State, requiring education authorities to employ only teachers registered with the General Teaching Council for Scotland, was ultra vires. The purpose of this Act is to nullify the effects of this decision, and validate the regulation retrospectively.

65 Local Government (Scotland) Act

This Act provides for the new structure of local government which came into operation in 1975. It was preceded by a white paper,

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"The Modernisation of Local Government in Scotland", produced by the Scottish Development Department in 1963 (Cmnd 2067) the Report of the Royal Commission on Local Government in Scotland (the "Wheatley Report") in 1969 (Cmnd 4150) and a further white paper in 1971, "Reform of Local Government in Scotland" (Cmnd 4583). The principles enunciated in all three documents are broadly similar. The Act sweeps away the former county, town and district councils, and the councils of the counties of cities, and replaces them with regional, district and islands councils. The councils are given extensive powers to delegate the making of decisions to committees and individual officials.

1974

19 Lord High Commissioner (Church of Scotland) Act

From 1974 onwards, the allowance paid to the Lord High Commissioner will be fixed by the Secretary of State, with the concurrence of the Treasury.

27 Education (Mentally Handicapped Children) (Scotland) Act

This Act brings Scotland into line with England and Wales with respect to the education of mentally handicapped children. It follows the pattern of the Education (Handicapped Children) Act 1970 (c.52) and implements the Melville Report on the Training of Staff for Centres for the Mentally Handicapped, published in 1973 by the Scottish Education Department.

An education authority is no longer required to ascertain whether mentally handicapped children are unsuitable for education at school, and imposes on them a duty to provide them with education whether they are accommodated in a hospital or elsewhere.

32 Town and Country Amenities Act

Although formally a GB Act, the provisions for England and Wales and for Scotland are written in tandem. For the most part, it amends textually the consolidating Town and Country Planning (Scotland) Act 1972 (c.52), with regard to conservation areas, listed buildings, and trees. Grants become payable under the Historic Buildings and Ancient Monuments Act 1953 (1 & 2 Eliz. 2, c.49) towards the upkeep of historic gardens.

38 Land Tenure Reform (Scotland) Act

The Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) was followed in 1973 by the publication by the Scottish Home and Health Department of a green paper, "Land Tenure Reform in Scotland".

Although this Act was promoted by the minority Labour government, the intention to introduce similar legislation had been announced by the Conservative government in the autumn of 1973.

This Act makes it illegal to impose feu duties, ground annuals, skat or any other periodical payment, or to increase feu duty under a charter of novodamus, from 1st September 1974.

Existing payments may be redeemed at any time when they would normally fall due; and, in any event, the proprietor must redeem them on the occasion of any future sale.

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Long leases (i.e. for over 20 years) of a dwelling house are banned, except where the dwelling house is ancillary to another use, e.g. a caretaker's house in a block of flats, or a farm house.

There are several provisions to prevent evasion of these reforms, and also some minor technical reforms.

45 Housing (Scotland) Act

This Act revises the provisions of the Housing (Scotland) Act 1969 (c.34) concerning improvement grants, the definition of the "tolerable standard", and replaces "housing treatment areas" with "housing action areas". The powers of local authorities to lend money to people for buying, building or improving houses, are considerably extended.

1975

8 Offshore Petroleum Development (Scotland) Act

The purpose of this Act is to enable the Secretary of State to acquire land expeditiously for purposes relating to exploration for and exploitation of offshore petroleum, by agreement or compulsorily. The procedure is without prejudice to the requirements of planning legislation to obtain planning permission for any such development.

The Secretary of State may declare part of the sea within UK territorial waters to be a designated sea area, in order to facilitate or control operations relating, for example, to the offshore construction of oil production platforms and other installations.

There are provisions to secure, where practicable, the reinstatement of land acquired under this Act when it is no longer needed.

20 District Courts (Scotland) Act

This Act must be seen as a consequence of the reorganisation of local government in Scotland under the Act of 1973 (c.65). The burgh courts and the justice of the peace courts are replaced by district courts. Justices of the peace are appointed by the Secretary of State on behalf of the Queen for each commission area, i.e. for each district or islands area. Bailies, judges of police and justices of the peace who held office before the Act came into force on 16th May 1975 were continued in office.

The jurisdiction of the court may be exercised by one or more justices - usually one in practice. The Act provides for the transfer of responsibility for prosecutions from the district prosecutor appointed under the Act to the procurator fiscal service, whose members are answerable to the Lord Advocate. This was effected in 1976.

21 Criminal Procedure (Scotland) Act

This Act is in effect a code of criminal procedure. It consoli-

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dates Acts of Parliament and Acts of Adjournal spanning nearly four centuries. Since the latter are subject to control by the courts if they are *ultra vires*, there are special provisions to protect this principle in relation to those Acts of Adjournal which have been (for the sake of intelligibility) incorporated in this Act.

28 Housing Rents and Subsidies (Scotland) Act

This Act repeals several of the provisions of the Act of 1972 (c.46) and restores the traditional discretion of local authorities to fix rents. It also contains provisions for phasing increases in rents in the private sector, including special increases where landlords have carried out repairs relating to dwelling houses subject to controlled tenancies.

30 Local Government (Scotland) Act

This Act supplements the Act of 1973 (c.65). It brings the local government financial year into line with that of central government, to begin, from 1976, on 1st April. The quinquennial revaluation of lands and heritages is postponed until 1978, to be in force from 1st April 1978 to 31st March 1983.

Payment of rates by instalments (ten from May to February) becomes the rule rather than the exception.

Reformulation of the rules relating to the rate support grant allow special consideration to be given to authorities incurring undefined "extraordinary expenses" - effectively, expenditure occasioned by oil related developments.

Percentage payments related to expenditure on certain road maintenance, and subsidies for rural bus or ferry services, are abolished, and the expenses will be met by local authorities out of increased rate support grant.

Following the modern fashion for ombudsmen, the Crown is enabled to appoint a Commissioner for Local Administration in Scotland to examine a wide range of matters subject to local administration. Apart from compulsory retirement at the age of 65, the Commissioner holds office on terms similar to those applicable to the higher judiciary.

69 Scottish Development Agency Act

This Act may be seen as complementing the Industry Act 1975 (c.68) and the Welsh Development Agency Act 1975 (c.70). It provides for the establishment of the Scottish Development Agency and the appointment of the Scottish Industrial Development Board.

The Agency is required not only to further economic development but also to seek to improve the environment in Scotland. It may provide finance and premises for industry, and is required to promote industrial democracy in undertakings it controls. The interests of the Scottish Industrial Estates Corporation and of

the Small Industries Council for Rural areas of Scotland are transferred to the Agency. It also takes over from local authorities the financing and implementation of the derelict land clearance programme.

The duty of the Board is to advise the Secretary of State in the exercise of his duties under section 7 of the Industry Act 1972 (C.63) to give selective financial aid to industry in assisted areas.

1976

6 Solicitors (Scotland) Act

This Act extends the powers of the Law Society to deal with property in the hands of a solicitor dying or retiring from practice, and with client accounts of a solicitor in practice on his own during his incapacity from illness or accident.

The Secretary of State is empowered, after consultation with the Lord President, to appoint a lay observer to examine allegations about the Society's treatment of complaints about solicitors or their employees. The Society must consider any report or recommendation made by the lay observer, and notify him of any action taken in consequence. The lay observer's annual report to the Secretary of State must be laid before Parliament.

The Council of the Law Society is given powers to make rules with the concurrence of the Lord President about professional indemnity of solicitors, similar to those in the English Solicitors Act 1974 (C.47) section 37.

Solicitors whose practice is of a specialised nature may be barred from taking apprentices.

The name of the Discipline Committee of the Law Society is changed to The Scottish Solicitors Discipline Tribunal, and it must now include two lay members, appointed by the Lord President. A quorum of the Tribunal is four, of whom at least one must be a lay member, while professional members must exceed the number of lay members present.

11 Housing (Amendment) (Scotland) Act

The aggregate amount of advances to the Scottish Special Housing Association is increased to £375 million, but the Secretary of State may by order (exercisable by statutory instrument subject to affirmative resolution of the house of commons) increase this to £500 million.

13 Damages (Scotland) Act

The Scottish Law Commission put forward proposals in its Memorandum No. 17, Damages for Injuries Causing Death, in 1972, and published a draft bill in its Report on the Law Relating to Damages for Injuries Causing Death (Scot. Law Com. No. 31, 1973). This Act implements the main proposals. It is relatively brief

but highly technical.

The circle of relatives who may claim damages is considerably extended, to take into account the conditions of modern society. It includes any person "who was accepted by the deceased as a child of his family", all ascendants, descendants, collaterals, divorced spouses, relationship by affinity, half-blood, step-children and illegitimate children. The test is whether the deceased in fact supported the claimant.

Solatium for relatives is abolished, and replaced by a "loss of society award".

Complicated rules indicate the method of calculating damages due to an injured person for patrimonial loss where his expectation of life is diminished.

14 Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act

This Act modernises the procedure relating to fatal accident and sudden deaths inquiries laid down in Acts going back to 1895. It follows broadly the recommendations contained in "The Sheriff Court: Report by the Committee appointed by the Secretary of State" (the Grant Report) (Cmd 3248) published in 1967.

The sheriff holds inquiries under the Act without a jury, whereas formerly he sat with a jury of seven. There must be an inquiry in all cases where a person dies as a result of an accident in the course of his employment or occupation, in Scotland or in mineral operations on that part of the continental shelf to which Scots Law applies, whether he is an employee, employer or self-employed.

The sheriff may impose restrictions on the reporting of information, including a picture, in the press or broadcasting systems, which might lead to the identification of any person under the age of 17 who is involved in the inquiry.

20 Education (Scotland) Act

This Act contains mainly textual amendments to earlier legislation. It gives education authorities wide discretion in fixing "school commencement dates" for children due to begin primary education. New rules are introduced for calculating school leaving dates.

21 Crofting Reform (Scotland) Act

This Act greatly enhances the rights of crofters and cottars. They are given an absolute right to obtain a title as owner to the site of their dwelling-house, plus a reasonable amount of garden ground. A crofter may acquire the rest of the croft land tenanted by him by agreement or on making a successful application to the Scottish Land Court. The price is normally 15 years' purchase at the current rent, but to avoid penalising a benevolent

landlord who has not increased rents this may be adjusted to a fair rent for the relevant land. Financial penalties discourage sales within five years of acquisition.

A crofter who remains as a tenant is given a right to share in the development value of land on resumption of occupation by the landlord or on compulsory purchase. The interests of crofters and cottars are also protected from "planning blight".

Crofters and cottars who have acquired the site of their dwelling-houses may, for up to seven years from acquisition, obtain financial assistance from the Secretary of State for improvements to their dwelling-houses and for provision or improvement of roads or water, electricity or gas supplies.

22 Freshwater and Salmon Fisheries (Scotland) Act

This Act was passed in order to stimulate an increase in the facilities for the enjoyment of fishing, especially for trout and salmon. The Secretary of State is enabled to make protection orders in relation to catchment areas, following receipt of proposals of owners or occupiers of land with fishing rights, and consultation with representatives of those interested in freshwater fishing in the area. A protection order may prohibit unauthorised persons from fishing in such an area.

The Secretary of State can appoint wardens nominated by the owners and occupiers, and these are given modest powers to enable them to police the protected waters.

The provisions of the Leases Act 1449 (c.6), which already applied to salmon fishings, are extended to cover all freshwater fishings, so as to give a lessee a real right against singular successors of the lessor.

Certain restraints on fish farmers, which were originally designed to conserve wild stocks of fish and are now irrelevant to stocks managed under modern conditions, are removed.

39 Divorce (Scotland) Act

For many people, this is perhaps one of the most important Acts passed in the decade. As with the English Divorce Reform Act 1969 (c.55) it purports to prescribe irretrievable breakdown of marriage as the sole ground of divorce. But irretrievable breakdown can be established only if at least one of five facts are proved. Summarised, these are adultery, behaviour such that the pursuer cannot reasonably be expected to cohabit with the defender, two years' desertion, two years' separation plus the defender's consent to divorce and five years' separation without the defender's consent (unless in this last case the grant of decree would cause the defender grave financial hardship). The court is given increased discretion in the awarding of alimony and extensive powers to make orders for payment of a capital sum, and to make and vary orders for payment of periodical

allowances to a former spouse by the other, or out of his estate on his death.

The husband's right to cite a paramour as co-defender and sue for damages is abolished.

Cohabitation is defined in such a way as to make the test, especially in relation to separation, much more objective than it is in England.

61 Electricity (Financial Provisions) (Scotland) Act

This brief Act increases the borrowing powers of the two Scottish Electricity Boards and provides for compensating the North of Scotland Hydro-Electric Board for deficits incurred in supplying electricity to the British Aluminium Company Limited's aluminium reduction plant at Invergordon.

64 Valuation and Rating (Exempted Classes) (Scotland) Act

This Act enables the Secretary of State, by order (exercisable by statutory instrument subject to affirmative resolution of both houses of parliament) to exclude from the valuation roll prescribed types of lands and heritages that lie wholly or partly on, over or under the bed of the sea.

65 Retirement of Teachers (Scotland) Act

This is a brief Act, textually replacing section 16 of the Education (Scotland) Act 1969 (c.49) with new provisions, which reduce the statutory age of retirement of teachers not holding a post of special responsibility from 70 to 65, with effect from 1st January 1977.

They may, however, be re-employed in a basic grade post on a temporary year to year basis.

Teachers holding posts of special responsibility, who also must retire at 65, may be re-employed in these posts for a further period of three months after retirement, to ensure smooth hand-over of their work.

These rules apply to teachers employed by education authorities and by grant-aided schools, and are designed to relieve unemployment among recently qualified teachers.

66 Licensing (Scotland) Act

This lengthy piece of legislation replaces existing law relating to liquor licensing and is based on the Report of the Departmental Committee on Scottish Licensing Law (the Clayson Report) (Cmd 5354) published in 1973. It completely modernises Scottish licensing laws, in the hope that the new system will be more convenient for the public and also tend to reduce drunkenness. The whole Act has been in force since 1st July 1977. For a comprehensive study reference should be made to Allan and Chapman: The Licensing (Scotland) Act 1976, published by W. Green & Son Ltd., Edinburgh.

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67 Sexual Offences (Scotland) Act

This is pure consolidation, replacing legislation going back 90 years. Consequently it re-enacts section 11 of the Criminal Law Amendment Act 1885 (48 & 49 Vict c.69) which prohibits any act of gross indecency between males, whether in public or in private. In practice, prosecutions for the latter offence are virtually obsolete.

1977

10 Town and Country Planning (Scotland) Act

This Act amends textually Scottish Planning legislation as contained in the Act of 1972 (c.52) and the Local Government (Scotland) Act 1973 (c.65).

It provides more flexible machinery for the making of local plans, and fills a gap by providing for appeals to the Secretary of State from decisions of a regional planning authority where a planning application has been called in by such an authority.

Planning authorities are enabled to serve stop notices in any circumstances where they have served an enforcement notice. Site notices may be displayed to draw attention to a stop notice. Stop notices may not be used in relation to permanent residential use of land, buildings or caravans.

14 Returning Officers (Scotland) Act

This Act provides that returning officers appointed by regional or islands councils under section 6 of the Local Government (Scotland) Act 1973 (c.65) shall be the returning officers for parliamentary elections. Formerly, the returning officers were the Sheriff Principals, with practical administrative responsibility undertaken by the sheriff clerk service.

15 Marriage (Scotland) Act

This Act is based on the report of the Kilbrandon Committee on The Marriage Law of Scotland (Cmnd 4011) published in 1969. It replaces legislation spanning four centuries. The minimum age for marriage remains 16. This rule applies to all marriages solemnised in Scotland, and to all persons domiciled in Scotland.

The law relating to prohibited degrees is clarified, by listing clearly the persons who are prohibited from marrying by reason of their relationship. The table is based broadly on genetic grounds, modified to have regard to the roles played by individuals within a family. Although marriage between a great grandparent and great grandchild is forbidden, it is permitted between granduncle and grand niece! It is forbidden between adoptive parents and children, but not between adoptive brothers and sisters provided that they are not in fact related in the full or half blood.

The publication of banns becomes essentially a matter of the

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internal discipline of religious denominations, and all persons must have resort to a notice of intention to marry, given to the registrar of the district where the marriage is to be solemnised. Religious marriages may continue to be solemnised in any place - not necessarily in "licensed premises" as in England. Celebrants may be ministers of the Church of Scotland, or of other denominations prescribed by regulations made by the Secretary of State, or specially registered, or other individuals temporarily authorised to act.

Although the Act contains penalties for breaches of its provisions, not every breach makes the purported marriage void. The law relating to irregular marriages is unchanged.

16 New Towns (Scotland) Act

Recent demographic projections point to a stabilisation and possible decrease in the population. Accordingly in May 1976 the government announced its decision to abandon the development of the New Town of Stonehouse. This is a short Act which authorises the Secretary of State, within five years of designating an area as the site of a New Town, to revoke the designation order and make further orders of a consequential nature. The former owners of land acquired by the defunct development corporation are to be given an opportunity to buy back their land on terms approved by the Secretary of State and the Treasury - not necessarily at the best price obtainable on the open market.

27 Presumption of Death (Scotland) Act

Formerly the law relating to presumption of death was in a confused state, depending on whether the matter had to be settled at common law, or under the Presumption of Life Limitation (Scotland) Act 1882 (54 & 55 Vict c.29) or the Divorce (Scotland) Act 1938 (1 & 2 Geo 6 c.50). This Act introduces uniform rules applicable in all cases. There are provisions to deal with the eventual reappearance of a person presumed dead, but in all cases any marriage of the former missing person remains dissolved.

28 Control of Food Premises (Scotland) Act

This Act reinforces the Food and Drugs (Scotland) Act 1956 (4 & 5 Eliz 2, c.30) by enabling the sheriff, on the application of the procurator fiscal, to make a closure order, or an interim order, to prevent the use of insanitary premises, stalls or vehicles for the sale of food.

50 Unfair Contract Terms Act (Parts II and III)

This Act provides that terms in contracts excluding liability for death or personal injury shall be void. Other terms may be void, in the case of a consumer contract, against the consumer, and in other contracts shall have no effect if they are not fair and reasonable.

1978

4 Local Government (Scotland) Act

This Act contains textual amendments to section 6 and the associated schedule of the Local Government (Scotland) Act 1975 (c.30) in relation to valuation by formula of lands and heritages occupied by water undertakings, the British Gas Corporation, the Electricity Boards, the Post Office, National Coal Board, docks, harbours and businesses engaged in rediffusion of radio and TV by wire. It also contains a minor amendment concerning payments to the Commissioner for Local Administration and his officers.

The repeal of the Burgh Police (Scotland) Acts and similar local statutory provisions, under the Local Government (Scotland) Act 1973 (c.65), is postponed from the end of 1979 to the end of 1982.

14 Housing (Financial Provisions) (Scotland) Act

The provisions of this Act are designed mainly to implement the proposals contained in a green paper entitled "Scottish Housing - A consultative Document" (Cmd 6852), published in 1977. A housing support grant, analogous to the rate support grant, is introduced in place of the former exchequer payments to housing authorities. Similar grants are payable to New Town Development Corporations and to the Scottish Special Housing Association.

The subsidies paid to local authorities to meet the cost of rent rebates and allowances are increased from 75% to 90%.

The government is authorised to give or lend money to voluntary organisations to promote the training of housing managers. This was designed to provide support for a new Housing Training Council, recommended by the Scottish Housing Advisory Committee in "Training for Tomorrow" (1977), and endorsed by the green paper. But after the change of government in May 1979 it was decided not to establish the Council.

Local authorities are authorised to make grants and loans to owners to meet the expenses of repairs to houses not meeting the tolerable standard, or otherwise in a state of dilapidation, but situated outside housing action areas, as defined in the Housing (Scotland) Act 1974 (c.45). Improvement of individual properties outside housing action areas may also be required by a local authority, but payment of an improvement grant towards expenses incurred is mandatory.

24 Theatres Trust (Scotland) Act

The Theatres Trust Act 1976 (c.27), which provides for the appointment of a trust, consisting of 15 members appointed by the Secretary of State, "to promote the better protection of theatres for the benefit of the nation" to own and manage theatres and help others to do so, did not originally apply to Scotland. Under this Act, its provisions are now extended to Scotland.

28 Adoption (Scotland) Act

This is a consolidating Act, covering 20 years of legislation and including amendments recommended by the Scottish Law Commission in its Report on the Consolidation of Certain Enactments Relating to Adoption in Scotland (Cmd 7187). It incorporates many changes in the law brought about by the Children Act 1975 (c.72). The Act had not come into force by the end of April 1980, mainly because some of the consolidated material was not yet in operation.

29 National Health Service (Scotland) Act

This Act consolidates the whole corpus of post-war legislation relating to the national health service in Scotland.

35 Import of Live Fish (Scotland) Act

The importation in 1976 of a consignment of eggs of Coho salmon caused considerable concern about possible risks of predations and spread of infections by exotic species to salmon and sea trout. This Act supplements the Diseases of Fish Act 1937 (1 Edw 8 & 1 Geo 6, c.33) by enabling the Secretary of State, after consultation with the Nature Conservancy Council, to make an order for the banning or control by licence of importation of non-native fish or live eggs of such fish, including shellfish.

The Act may be compared with the Destructive Imported Animals Act 1932 (22 & 23 Geo V, c.12) which deals primarily with musk rats but may be extended to other species of mammals.

39 Local Government Act

This is in form a GB Act, but its single operative section amends the Local Government (Scotland) Act 1975 (c.30) and the corresponding English Act by inserting a subsection to authorise a local authority to incur expenditure by making payments to persons who have suffered injustice through maladministration by the authority concerned.

40 Rating (Disabled Persons) Act

This is a GB Act, with provisions for Scotland and England in tandem. It grants relief from rates to institutions for the disabled, and rebates for other premises with special facilities for them.

49 Community Service by Offenders (Scotland) Act

Community service orders were introduced in England and Wales by the Criminal Justice Act 1972 (c.71). Alternative penal measures to imprisonment were the subject of a resolution approved at the 24th Plenary Session of the European Committee on Crime Problems (ECCP) in May 1975, adopted by the Committee of Ministers of the Council of Europe at the 225th meeting of the Ministers' Deputies in March 1976 (Resolution (76) 10), and further supported unanimously at the 10th Conference of European Ministers of Justice in Brussels in June 1976 (CMJ (76) 2).

Community service schemes have operated for several years in Scotland on a non-statutory basis, as a condition attached to probation orders.

This Act enables all criminal courts to make a community service order, when a person of 16 or over is convicted of an offence punishable by imprisonment.

The offender may be required to perform unpaid work normally for from 40 to 240 hours within a period of 12 months. To avoid possible infringement of the European Convention on Human Rights, article 4, which restricts compulsory unpaid work outside a penal institution, the offender's consent to an order is required.

If the offender is 17 years old or more, arrangements may be made for the work to be done in England or Wales (the restriction being due to the fact that the Powers of Criminal Courts Act 1973 (c.62) does not apply to offenders below that age.) There does not appear to be any reciprocal provision for the performance of an English community service order in Scotland.

The Act does not derogate from the operation of the community service schemes mentioned above, where supervision for more than a year appears to be more appropriate.

51 Scotland Act

This Act has been discussed at length elsewhere.

It provided for a Scottish Assembly with legislative powers and a Scottish Executive but failed to achieve the required support of 40% of the registered electors in Scotland in the referendum held on 1st March 1979; it subsequently was repealed by Order in Council, the draft of which had been approved by both houses of parliament. See the Scotland Act 1978 (Repeal) Order 1979 (No. 928).

1979

11 Electricity (Scotland) Act

This Act consolidates some of the provisions of a number of Acts relating to the two Scottish Electricity Boards, starting with the pioneering Hydro-Electric Development (Scotland) Act 1943 (6 & 7 Geo. 6 c.32), and includes five minor amendments recommended by the Scottish Law Commission to remove anomalies in existing law. The constitutions of the Boards are set out in a schedule to the Act.

19 Administration of Justice (Emergency Provisions) (Scotland) Act

This Act made arrangements to cope with the difficulties that arose in the administration of both civil and criminal justice as a result of the strike of court officials during the so-called "winter of discontent" that preceded the general election in 1979. Broadly speaking, the Act stopped the clock during

the emergency period (which began on 23rd February 1979 and ended by ministerial order on 28th May) to prevent time (including the 110 day rule) running out in relation to any proceedings, including the institution of proceedings. This Act ceased to have effect one month after the end of the emergency period namely, on 28th June 1979.

22 Confirmation of Small Estates (Scotland) Act

This is a brief Act containing textual amendments to the Intestates Widows and Children (Scotland) Act 1875 (38 & 39 Vict. c.41) and the Small Testate Estates (Scotland) Act 1876 (39 & 40 Vict. c.24), which relate to confirmation to small estates. It raises the figures to which the provisions for simplified administration of these estates applies to £10,000, and provides for further revision of these figures by order made by statutory instrument by the Secretary of State, subject to annulment by a resolution of either house of parliament. The family or other applicant does not have to employ a solicitor when dealing with these estates, but deals directly with the sheriff clerk.

It may be noted that, with the passing of this Act, Mr Michael Clark Hutchison achieved a record for getting Private Members' Bills on to the Statute Book.

33 Land Registration (Scotland) Act

This Act further implements the recommendations of the Halliday Committee (Cmnd 3118) by providing for the simplification of deeds and the recording of agreements and plans resolving discrepancies disclosed in titles as to common boundaries.

Of major interest is the introduction of registration of interests in land. This follows the proposals contained in the report of the Henry Committee on Conveyancing Legislation and Practice (Cmnd 4137, October 1969). These proposals were tested by a pilot scheme operated in the Department of the Registers of Scotland.

The Act provides for the establishment of the Land Register of Scotland, which will eventually supersede the Register of Sasines. When the register is in operation, registration will be the only method of creating a real right. Generally speaking, any new feudal grant of an interest in land, any new long lease, the transfer or any interest in land for valuable consideration or in consideration of marriage, and the creation of any new heritable security over land will have to be registered. The system depends on mapping, and the description of land to be entered in the register will be based on the ordnance map. Applications to register small parcels known as "souvenir plots" must be rejected by the Keeper.

The Act outlines the procedure to be followed by the Keeper and indicates the matters to be entered in the register. On completion of registration, the applicant will receive an

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authenticated "land certificate" which will be a copy of the matters inscribed in the register. A "charge certificate" will show the registration of heritable securities.

The Act provides for rectification of the register, and for the payment of an indemnity by the Keeper to anyone who suffers loss as a result of rectification or refusal to rectify, the loss or destruction of documents lodged with the keeper, and any errors or omissions in any land or charge certificate.

The Act also contains provisions to cover non-feudal tenures, such as udal tenure, kindly tenancy and tenancy-at-will.